

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Facilitating the Deployment of)	PS Docket No. 11-153
Text-to-911 and Other Next)	
Generation 911 Applications)	
)	
Framework for Next Generation)	PS Docket No. 10-255
911 Deployment)	
)	

COMMENTS OF TRACFONE WIRELESS, INC.

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby comments in response to the public notice issued in this proceeding.¹

INTRODUCTION

On December 12, 2013, the Commission adopted a Further Notice of Proposed Rulemaking to facilitate the deployment of Text-to-911 and other Next Generation 911 (“NG 911”) applications.² In the Text-to-911 FNPRM, the Commission proposed rules that would require all wireless carriers and interconnected IP-based providers of text messaging applications to support the ability of consumers to use text messaging to contact 911 services and to advise consumers through a “bounce back” error message when the ability to send a text to 911 is not available. The Commission seeks comment on various aspects of text-to-911, including the

¹Public Notice - Public Safety and Homeland Security Bureau Announces Comment and Reply Comment Dates for the Further Notice of Proposed Rulemaking in the Next Generation 911 Proceeding, DA 13-22, released January 9, 2013.

² Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, et al., PS Docket No. 11-153 *et al.*, Further Notice of Proposed Rulemaking, FCC 12-149 (December 13, 2012) (“Text-to-911 FNPRM”).

technical feasibility, reliability, timing and costs and funding of text-to-911.³ TracFone's comments solely address funding of text-to-911. In particular, TracFone addresses how the current 911 funding mechanisms, which the Commission suggests should be used to fund text-to-911 capability, is not competitively or technologically neutral because it disproportionately burdens providers of prepaid wireless service, such as TracFone.

COMMENTS

TracFone is a leading provider of prepaid commercial mobile radio services ("CMRS"). Unlike other CMRS providers who offer prepaid service options in addition to post-paid or billed calling services, TracFone only provides prepaid services. In the Text-to-911 FNPRM, the Commission notes that states can use 911 fees and surcharges as "an available and significant source of funding that can facilitate the roll-out of text-to-911 capability."⁴ By these comments, TracFone reminds the Commission that it has serious concerns about existing 911 funding mechanisms.

The Commission recently sought comment on various issues concerning the optimal legal and regulatory framework for developing Next Generation 911 services ("NG 911"), including recommendations for removing or preempting state laws and regulations that hinder the development of NG 911 services and eliminating outdated federal laws.⁵ Among the issues

³ Several carriers have proposed to roll out text-to-911 capabilities prior to a regulatory requirement to do so. To alleviate consumer confusion about the availability of text-to-911, the Commission bifurcated the comment cycles to require comments on automated error messages for failed text-to-911 attempts to be filed on an expedited basis prior to comments on other issues. See Text-to-911 FNPRM, ¶ 20.

⁴ Text-to-911 FNPRM, ¶ 152.

⁵ Public Notice - Public Safety and Homeland Security Bureau Seeks Comment on the Legal and Statutory Framework for Next Generation 9-1-1 Services Pursuant to the Next Generation 9-1-1 Advancement Act of 2012, DA 12-1831, released November 13, 2012 ("November 2012 Notice").

presented for comment in the November 2012 Notice was the adequacy of current funding mechanisms which rely on surcharges on telephone bills. TracFone filed extensive comments and reply comments in response to the November 2012 Notice. TracFone refers the Commission to those filings and incorporates them in these Comments.⁶

In TracFone's previously-filed comments and reply comments regarding 911 funding, TracFone explained that there are significant problems with the existing 911 funding mechanisms because these mechanisms vary by state and often fail to require contributions from all customers of telecommunications service that are able to access 911 services. Moreover, 911 funding mechanisms, to the extent that they require collection of 911 fees through a billing process, disproportionately burden prepaid wireless carriers that do not render bills to customers, and, therefore, have no opportunity to collect 911 fees and surcharges through a billing process. Many states have addressed this inequitable situation by enacting statutes which require that 911 fees and surcharges on non-billed prepaid services be collected from consumers at the point of retail sale. To date, approximately 29 states have enacted some version of point-of-sale collection legislation. However, other states continue to require providers of prepaid services to remit 911 fees and surcharges from their own resources on behalf of those consumers from whom they are unable to collect such fees.

TracFone's comments focused on the need for federal standards to ensure that funding methods for both existing 911 and future NG 911 systems, which will include text-to-911 capabilities, are equitable, non-discriminatory, and competitively and technologically neutral. In particular, TracFone advocated for a competitively neutral and technologically neutral 911

⁶ See Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications, et al., PS Docket No. 11-153 *et al.*, Comments of TracFone Wireless, Inc., December 13, 2012, and Reply Comments of TracFone Wireless, Inc., January 14, 2013.

funding mechanism for prepaid wireless services as has already been enacted in 29 states whereby retail vendors of prepaid wireless services would collect the 911 fees at the retail point of retail sale (“POS”), either as a flat fee per card or as a percentage of the retail purchase price. TracFone also supported other commenters’ suggestions that general revenues should be considered as a source of funding for NG 911 services because such services are essential government services, and since all residents -- not just those who purchase telecommunications service – benefit from ubiquitously available 911 services.

On February 22, 2013, the Commission submitted a Report to Congress and Recommendations concerning the legal and statutory framework for NG 911 services. The report was submitted pursuant to Section 6509 of the Next Generation 9-1-1 Advancement Act of 2012, enacted as part of the Middle Class Tax Relief and Job Creation Act of 2012.⁷ In the Report, the Commission cites to TracFone’s comments and reply comments regarding 911 funding and makes the following recommendation (Recommendation 4.1.4.2.(1)):

Congress should develop incentives for states to broaden the base of contributors to NG911 funding to more accurately reflect the benefits derived from NG911 service.

There appears to be a strong consensus that the existing user fee-based regime is inadequate both with respect to the ability to fund the initial and ongoing expenses associated with NG911 and with respect to the inclusion of all participants in the NG911 ecosystem that will benefit from the significant enhancements to public safety that NG911 will provide. In addition, as individual consumers increasingly depend on a range of devices and services for communication, fixed per-line fees may be seen as not competitively neutral and unfair. Accordingly, Congress should consider paths to develop incentives for states to broaden the base of contributors to this effort to more accurately reflect the benefits derived. This might be accomplished by providing states with a menu of options for permissible contribution from point-of-sale collection to general revenue assessment, with accompanying federal incentives depending on Congressional preference for outcomes.

⁷ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 (2012), Title VI, Subtitle E, Next Generation 9-1-1 Advancement Act § 6509.

Notably, the Commission has agreed with TracFone and others that current 911 funding mechanisms may not be competitively neutral and has recommended to Congress that it develop incentives for states to change their 911 funding methods to include POS collection or to rely on general revenues.

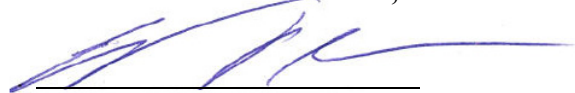
As the Commission considers rules to govern NG 911 services, including text-to-911, TracFone requests that it continue to be mindful of how such services are funded. The Commission has already recognized that NG 911 funding mechanisms must be competitively neutral and fair, as well as require that all persons who benefit from NG 911 services to be responsible for contributing to the costs of those services, irrespective of whether they purchase service on a post-paid, billed basis or on a prepaid non-billed basis.

CONCLUSION

TracFone respectfully requests that the Commission consider TracFone's views and recommendations set forth in these comments and the comments and reply comments referenced in this filing. Specifically, TracFone urges the Commission to continue to take actions that it deems necessary to ensure that state 911 funding laws are non-discriminatory, competitively and technologically neutral, and fairly distribute the cost of NG 911 services among all those who benefit from those services.

Respectfully submitted,

TRACFONE WIRELESS, INC.



Mitchell F. Brecher
Debra McGuire Mercer
GREENBERG TRAURIG, LLP
2101 L Street, NW, Suite 1000
Washington, DC 20037
(202) 331-3100
Its Attorneys

March 11, 2013